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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1212th MEETING

Held at Headquarters, New York, on Thursday, 25 March 1993, at 10 a.m.

Chairman: Mr. ANDO

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1212/Add.1.

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The meeting was called to order at 10.15 a.m.

1. Mr. ABARRY (Niger) said that the Committee's questions had, in the main, been prompted by the lack of necessary information in the initial report and he hoped that any questions which he was unable to answer would be answered in his country's subsequent report.

2. Many problems experienced in the Niger relating to the exercise of civil and political rights were due to the upheavals caused by the dismantling of the old order and the institution of a new order committed to the restoration of democracy and an atmosphere more conducive to the protection of those rights. Already, the human rights situation in the Niger was better than ever before.

3. In particular, there were no political prisoners in the country and the flourishing of new political parties was not, as some members appeared to believe, evidence of antagonisms within the population, so much as an expression of their mutually complementary aspirations towards pluralism. The country was currently engaged in the second round of presidential elections, in which two major political groups had emerged, divided neither on ethnic nor on tribal lines. All ethnic groups were represented in the different politiçal parties, although, inevitably, their leaders derived more support from their native regions. The Niger had eight major ethnic groups and was fortunate that those groups were closely interrelated. Consequently, issues which might otherwise have erupted in violence were generally settled among them in a lighthearted and harmless manner. Furthermore, over 90 per cent of the population of the Niger was Muslim and such Islamic principles as the concept of Ummah and the precept of tolerance had led to constantly improved relations between the various ethnic groups.

4. In that context, he explained that the Tuareg rebellion had complex historical roots and could be dated to the death in 1987 of the former President Seyni Kountché and the accession to power of General Ali Saïbou who had proclaimed a policy of relaxation of ethnic tension, issuing a general amnesty and visiting neighbouring countries with large Niger populations, primarily Algeria and Libya. Those visits had led to the return of many former residents who had been forced to flee the country in the 1980s because of the drought. They were primarily livestock farmers from the north of the country who, in the new economic conditions of the country, had been unable to resume their previous economic activities. In addition, the north of the country had been in a state of considerable upheaval caused by the conflict between two neighbouring countries, into which some of those people who had returned to the Niger in 1987 had been drawn. The returnees had brought arms and ammunition with them and received wide support from the population and the international community. In addition, many of them had come from countries such as Algeria and Libya and brought a new vision of the world, estranged from the traditional values still upheld by the elders remaining in the country. In consequence, new administrative leaders had emerged who were out of touch with traditional values, and misunderstandings and friction had arisen, further exacerbating the economic crisis already affecting the country. All those factors had combined to bring about the acts of insurrection in the north of the country, which, in turn, had been exploited by certain politicians to further their own ambitions.

(Mr. Abarry, Niger)

5. He noted that the population of the north of the country was not exclusively Tuareg but also included one large, Hausa-speaking, sedentary group. In addition, the Tuaregs themselves were not a homogenous group, but comprised some 10 separate tribes. The existence of the practice of slavery, mentioned by one member, was difficult to establish because of the difficult conditions in that part of the country and the serious crisis experienced by the Tuaregs. Furthermore, there were Tuareg populations in neighbouring countries as well and since the Niger's army was weak both in numbers and in equipment it was unable to ensure control over the entire country, with an area of 1.67 million square kilometres, and, in particular, to control transboundary movements of Tuareg groups. Efforts by the Government to reach a compromise settlement with the Tuaregs were seriously hampered by the existence of so many different groups.

6. He was pleased to inform members, however, that five days previously, the Niger Government had declared a cease-fire with the Front de Libération de L'Aïr et de l'Azaouad, effective from midnight on 20 March 1993, which had been negotiated by Government representatives and French mediators. In addition, on 16 March the Front had agreed to a 15-day cease-fire at the request of Algeria, which was similarly committed to finding a solution to the conflict. His Government had released several rebel prisoners, but regretted that it had little information about hostages in rebel hands. The condition of those hostages was a cause of serious concern: while the requirements of the Niger authorities were very clear, the opposing side appeared unable to agree on its own demands; an agreement made one day by one group could be rescinded the next by another group, since it had not been present when the original agreement was reached.

7. Turning to the question of the possibilities accorded to ethnic minorities to give democratic expression to their aspirations for the country's future, he said that popular participation in the recent election in the north had been as low as 8 per cent, as compared to 31 per cent country-wide. That low turnout was due, on the one hand, to the popular fear caused by previous incidents, when political meetings had been disrupted by unidentified elements from the north and from neighbouring countries, who had attacked political leaders and members of the public. To address the problem of minorities, the Government had established a new Ministry of State for National Reconciliation with a view to entrusting problems of national unity and the participation of minority populations in public affairs to a single political structure.

8. In response to the question concerning extrajudicial executions, he said that, following a conference on the events in Tchin-Tabaraden in May 1990, appropriate measures had been taken against the highest echelons of the army and public services who had been directly or indirectly responsible. Those very extensive measures had still been insufficient to satisfy certain extremists, however, who, for their own part, were unwilling to make any concessions to the authorities. In addition, other excesses committed by the army had ben investigated and the culprits brought to justice. The Government had joined all the various organizations involved in the defence of human rights in calling for a settlement of the problem of arbitrary arrests and for the freeing of all those held without charge. Those efforts had led to the release of all such detainees except for some 60 persons, to whom particularly strong suspicion

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attached. Their cases had been referred to the judicial authorities and the detainees in question were able to receive regular visits from family members, representatives of human rights organizations and journalists.

9. On the subject of the press, he cited legislation enacted in 1969 guaranteeing freedom of the press; the press in the Niger was free and received no State subsidy. Inevitably, it experienced certain financial difficulties which affected the quality of its output, and the role of the print media was limited by illiteracy; broadcast media on the other hand had an important role to play in disseminating knowledge of human rights, and radio clubs and educational television were creating an atmosphere more conducive to awareness of national and international legal instruments in that area.

10. Turning to the question of the status of women and the rights of children, he observed that, since the Niger was a Muslim country, there was a certain interaction between the precepts of Islam and the provisions of positive law. The first women's association had been established in 1976 and, while efforts continued in that direction, tangible results had been meagre. Two new women's organizations had been established since the onset of the democratic process, but because of extreme poverty in the country and a general lack of political will, no significant progress had been achieved. Efforts were being made to draft a new family code and a rural code, although, in that area too, progress had been slow.

11. Social changes of such a fundamental nature often took entire generations to effect and in the Niger, until recently, men in public administration had found it humiliating to have women superiors. In recent years, however, many women had been appointed to positions of high responsibility: there were women ministers, subprefects and mayors and, with the adoption of the new Constitution, the first women had been elected to the National Assembly. The unfortunate incident involving women, to which members had been referred, had been attributable not to the actions of the police, but to certain individuals provoked by the economic crisis and the influence of obscurantist religious ideas. Such acts of violence were strongly condemned by the Government and human rights organizations and the culprits were brought to justice.

12. The low literacy rates in the country were due to its social conditions and the influence of religion. Campaigns to remedy that situation had been mounted by women's associations and non-governmental organizations and considerable progress had also been made in endeavours to eradicate such practices as the marriage of very young girls. All the unacceptable customs highlighted by members were widely condemned by his authorities but difficult to combat because of the covert manner in which they were practised.

13. Turning to questions of a legal nature, he said that, under article 120 of the new Constitution, duly ratified treaties prevailed over domestic law, subject to compliance with those treaties by the other party. The legal position was further elaborated in article 119, which stated that if the Supreme Court was apprised by the President of the Republic, the President of the National Assembly or the Prime Minister that an international commitment contained a clause contrary to the country's Constitution, ratification could

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only proceed once the Constitution had been revised. As a result, the provisions of the Covenant and of the Optional Protocol were directly applicable by the courts of the Niger without the need for the adoption of a special law on their implementation. Any violation of those provisions and of domestic juridical norms would be referred to the courts.

14. At the same time, as established by article 98 (c) of the new Constitution, any private individual brought before the courts could raise the question of the constitutionality of a law. Such safeguards notwithstanding, certain social and religious elements in the country continued to maintain that recourse to the courts in both civil and administrative matters was limited. Owing to the force of tradition, the victims of everyday violations, such as traffic accidents, often preferred to seek the comfort of Allah than to obtain legal redress and there was little impetus for the defence of human rights in the Niger.

15. In response to the question concerning the availability of legal aid, he cited a law enacted in 1911, guaranteeing legal aid for any person or any public establishment or private association which lacked the resources to exercise their right to justice either as plaintiff or as defendant. Similarly, legislation enacted in 1967 defended the civil rights of minors brought before the judicial authorities and provided for mandatory counsel to ensure the defence of children in such instances. Such counsel was to be designated by the parents or, in their absence, by the authorities at least eight days prior to the hearing by the presiding officer. In 1990, the Niger had ratified the Convention on the Rights of the Child and some progress had been made in that area. The country's legal provisions did not allow the imprisonment of minors: instead, the rehabilitation of young offenders was carried out at special boarding institutions, usually with the approval of the family, where technical skills were taught.

16. The competence and jurisdiction of the judicial authorities in the Niger was established by legislation enacted in 1992, which stated that justice was rendered in civil, commercial and administrative matters by the Supreme Court, appeal courts, assize courts, courts of first instance, justices of the peace and the labour courts. Hearings were public, unless there were exceptional circumstances, such as threats to public order. Among efforts to ensure the independence of the judiciary, he mentioned the establishment of a special association for magistrates in the Niger, to ensure their independence vis-à-vis the executive branch.

17. Training was provided for police and members of other law enforcement agencies at one college in Niamey; in addition, many members of those agencies received training in other countries, primarily Algeria, Egypt and Senegal, which had greater experience and superior facilities in that area. The curriculum of the police college in Niamey included a course on human rights and fundamental freedoms, which was followed by all members of law enforcement agencies.

18. In response to the question regarding capital punishment, he said that, while capital punishment was still a theoretical possibility in the Niger, it had not been administered for more than 10 years and those persons who had been sentenced to death in that period had received a presidential pardon.

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19. The commission on political, economic and other crimes and abuses had been established some 15 months previously under the transitional arrangements, to investigate social abuses, misappropriation of funds and other illegal practices. It was not an emergency tribunal with repressive powers, but carried out its inquiries through regular channels, transmitting the results of its investigations to the High Council of the Republic which, in turn, transmitted them to the appropriate judicial authority. Following the investigations, remedies had been granted to the victims of attested abuses.

20. In response to the question raised about paragraph 19 of the initial report, stating that 15 political parties had been "provisionally" authorized, he explained that those parties had been authorized while the 1989 Constitution, which made no provision for a multi-party system, was still in force. Those parties had therefore been approved pending a new law on political parties and the adoption of a new Constitution. The only restriction on the establishment of political parties and associations was that no political party could be formed on the basis of ethnicity or religious affiliation.

21. In conclusion, he hoped that his replies had shed some light on the areas of concern to members and gave his assurances that his country's next report would be considerably more substantial and would contain the necessary elements for a constructive dialogue with the Committee.

22. Mr. EL-SHAFEI said that the additional information provided by the Niger delegation had been extremely useful to the Committee in understanding the situation in the country. However, he disagreed with the representative from the Niger that Islam, the dominant religion, and its attendant customs prevented people from being aware of, claiming and enjoying their full human rights.

23. Although the delegation had responded to some of the observations made to with respect to articles of the Covenant, certain queries had remained unanswered, in particular his request for information as to whether the new Constitution of 26 December 1992 reflected the new political situation in the country, which now had a multi-party system as opposed to a one-party system under the 1989 Constitution. He hoped that a copy of the new Constitution would be transmitted to the Committee as soon as possible.

24. Satisfactory answers had not been given to the queries concerning discrimination against women. Given the country's current situation, the position of women must be codified in new laws. He hoped that the civil and political rights of the Niger's population would be enhanced by the country's new circumstances and that a place would be found for the Covenant in the new scheme of things.

25. Responsibility for disseminating information on the Covenant and the Optional Protocol should not be left to non-governmental organizations alone; Government officials associated with the implementation of the Covenant must have full information about both the Covenant and the Optional Protocol. He hoped that more information would be disseminated in that regard.

26. Mr. AGUILAR said that he was very concerned about the implementation of the Covenant, particularly such crucial articles as 6, 7, 9 and 14 and those dealing

(Mr. Aguilar)

with fundamental freedoms. Although there were problems with discrimination not only on grounds of sex but also among the different ethnic groups, there was reason for optimism about the changes taking place. It was unfortunate that it would not be possible for a supplementary report, drafted in accordance with the Committee's guidelines, to be submitted during the current session to enable the Committee to engage in a dialogue with another delegation from the Niger: the Committee might be able to help the Niger during its current period of transition to democracy.

27. He was surprised at the low turnout in the recent elections and suggested that it probably had a lot to do with gender discrimination. According to the UNDP Human Development Report, the Niger had one of the lowest rates of school attendance in the world. Since most of the people who got an education were boys and men, most girls and women did not get any education at all. He appealed to the delegation to convey to the Government the great concerns expressed about the situation of women.

28. Mr. HERNDL said that it was extremely difficult at the present stage to assess the human rights situation in the Niger, which was in a phase of transition. There were many signs of positive developments in the country and he hoped that when the Committee took up the second periodic report of the Niger, which was already overdue, that would permit a proper dialogue to be established between the reporting State and the Committee. Despite the additional oral explanations given by the Niger delegation, he still did not have any idea of how the human rights situation was evolving in that country. Questions had been raised about the direct applicability of the Covenant under the legal system of the Niger and it was obviously of the utmost importance that the new Constitution should include a chapter on fundamental rights and freedoms which went well beyond the provisions of the 1989 Constitution.

29. It would be very helpful if the next report provided a complete picture of the situation regarding the structure of the judiciary, the administration of justice, equality for women and the treatment of minorities. It was important to establish a permanent dialogue between the Niger and the Committee. He was sure that the Centre for Human Rights would be able to provide the Government of the Niger with any advice it might need in drafting a comprehensive report on measures taken to implement the Covenant.

30. Mr. FRANCIS said that it was quite clear from the current situation in the country that ensuring respect for human rights in the Niger would be a very daunting task for officials. The dissemination of information about the Covenant was crucial to compliance with the obligations assumed under the Covenant. The emergence of a women's movement was very encouraging and the establishment of a magistrates' association would go a long way towards ensuring the independence of the judiciary. He had very great expectations of the Niger which, despite its current problems, had sent a delegation to engage in a sincere dialogue with the Committee, something which other States parties to the Covenant that did not face the same difficulties had not yet done.

31. Ms. EVATT said that she observed a clear commitment to change in the Niger and welcomed the move to establish a multi-party democracy. She commended, in particular, the attempt to overcome religious and ethnic divisions in the

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country. However, she was seriously concerned that attempts to implement the rights recognized in articles 6, 7 and 9 of the Covenant might be undermined. It was most important to build the correct structures for democracy, which would need to be considerably strengthened in the future. Such structures would also have to ensure due accountability of the legislative, executive and judicial branches. An independent judiciary was crucial for achieving progress in the exercise of human rights. Considerable work needed to be done to overcome traditional attitudes and prejudices towards women and she welcomed the steps being taken to address some of those problems.

32. It would be helpful if the Niger could establish an agency with clear responsibility for overseeing the implementation of rights and freedoms and for investigating and remedying abuses wherever these were identified within the Government. One solution would be to ensure that both official human rights agencies and non-governmental organizations were encouraged to have access to the media and to disseminate the message of democracy and equality throughout the country.

33. Mr. FODOR said that the Niger's report failed to indicate whether the provisions of the Covenant were duly reflected in the laws of the country. Although the delegation had provided some useful information which gave the Committee a better understanding of the situation in the country and had answered some of the questions put to it, he still did not see how the provisions of the Covenant were being implemented. The process of democratization in the Niger was a commendable development and, given that positive development, it was likely that the human rights situation would also improve gradually. However, that assumption was not sufficient to enable the Committee to carry out its mandate under article 40. He welcomed the news that the Niger would soon submit a second report, which augured well for increased cooperation with the Committee in the future.

34. Mr. WENNERGREN noted that the far-reaching reforms taking place in the Niger were aimed at the firm establishment of democracy and a state of law, which were prerequisites for the exercise of human rights. The fact that the death penalty was no longer implemented in practice was welcome news. More information on the status of women and children would be useful in forthcoming reports. He hoped that the situation of women and children, particularly the education of children, would improve. Since the delegation had not answered his question as to whether the Government intended to establish a commission similar to the crimes and abuses commission established in 1991 by the National Conference, he was recommending that it do so. Such a commission should investigate and prosecute crimes committed during the turbulent transitional period from 1990 to 1993, thereby restoring public confidence in the Government's determination to ensure that justice was done. As Ms. Evatt had noted, it would be a good idea to set up an agency that would receive and investigate public complaints of official abuses and provide appropriate remedies. The information given about human rights training for police and other law enforcement officials was also most useful. He hoped that the Niger would continue to develop such educational and training programmes for public officials.

35. Mr. MAVROMMATIS said that a comprehensive report was a necessary prerequisite for a proper dialogue. Nevertheless, the delegation's replies had shed a great deal of light on the current situation in the Niger. He welcomed the news regarding the changes in the status of women, as well as the background information on the Tuareg rebellion and the recent cease-fire. The next report should go beyond direct references to the Constitution and other laws and provide a picture of the machinery in place for their implementation, along with a discussion of related factors and difficulties. Such information would allow a true dialogue to begin and might also be useful to the country in its democratization process.

36. Mr. PRADO VALLEJO said that the Niger had made efforts to advance in the area of human rights and the newly established democratic institutions had alleviated human rights problems to some extent. He hoped that the country would continue on that course. Although the initial report had not been in accordance with Committee guidelines, the responses to questions had, in effect, provided an outline for the second report, which should be submitted as soon as possible.

37. Despite the efforts made to provide further information, several issues of concern to the Committee remained. First, there had been no investigation of past human rights violations. Action had been taken in some cases, but not all, and no compensation had been provided to victims of past abuses. Discrimination and even violence persisted against women; the Government must introduce effective measures for promoting women's equal rights. The reply about political detainees was unsatisfactory: persons detained without trial should either be released or given a fair trial. Moreover, cases of extrajudicial executions such as those carried out against 40 Tuaregs in 1990, were still not being investigated. The Government should demonstrate its respect for the relevant provisions of the Covenant by taking appropriate steps to remedy that situation. Lastly, it should make every effort to disseminate information about the Covenant at every level of society, so as to allow people to become knowledgeable about their human rights.

38. Mrs. HIGGINS said that, in her opinion, a true dialogue had begun. However, because of a lack of basic information, above all on the new Constitution, the Committee must wait for a response on a variety of issues. The delegation had not answered questions about the regime of exception, the grounds for discrimination and whether the Covenant had been used as a model for constitutional provisions guaranteeing basic rights.

39. The Committee still needed to know what measures were being taken to ensure respect for the 48-hour limit on policy custody and what controls there were on extensions of that period by magistrates. More information was required on the Supreme Court, including its composition, the appointment of members by the Prime Minister, the problem of access to counsel before trial, and the fact that closed sessions could be ordered. Further details were needed on the 1990 extrajudicial executions and on the reasons for the failure to respond to the inquiries of the Special Rapporteur on summary or arbitrary executions. She would be interested to learn more about efforts to address ongoing discrimination against women in the areas of education, property rights and freedom of movement. She would also like to know what was being done to ensure that the security forces obeyed Government orders concerning arrests.

(Mrs. Higgins)

40. She wondered whether it would be a general policy that those found guilty of torture and related offences would be pardoned. Although holding trials in order to establish the facts of such crimes was a positive step, and retribution was not the desired result, the wrong signal could be sent with regard to future compliance with the Covenant if fact-finding alone, and not punishment, was emphasized.

41. There had been a number of encouraging developments such as the establishment of local human rights groups and the adoption of the new Constitution, since the National Conference, but many positive steps towards pluralism had been taken even earlier, such as the relaxation of controls on the press. In addition, it appeared that there had always been a large measure of religious tolerance in the Niger.

42. The new Constitution should be transmitted to the Committee as soon as possible and an early date set for the submission of the second periodic report, which should contain more complete core information and replies to the questions put by Committee members.

43. Ms. CHANET welcomed the news that a cease-fire had been reached with a view to ending the Tuareg rebellion and that many prisoners had been released; she hoped that a lasting peace would follow. Although the delegation had provided a great deal of information, some of its answers, such as those concerning the legal system, arbitrary arrests and the investigation of summary executions, had been too general. With regard to the judiciary, the magistrates' association was a positive step, but more such steps were needed: the status of the judiciary affected the freedom and independence of all citizens. It was also gratifying to hear that some women were occupying high-level posts, but the generally low rate of literacy among women affected the life of the entire country. The questions regarding police custody and guarantees of freedom of expression under article 19 during states of emergency had not been satisfactorily answered.

44. The second periodic report should permit a true dialogue and would allow improvements to be recognized. Indeed, there were many encouraging signs which augured well for the future.

45. Mr. LALLAH said that the quality of dialogue had suffered because the Niger's initial report had been both late and minimal in content. However, he had great hopes for the future because of the country's commitment to change. In the next report, the Committee would need more historical background on the current situation in order to conduct a systematic examination of the exercise of power, the status of the judiciary and the enjoyment of human rights.

46. Mr. POCAR said it was regrettable that most of his questions had been based on sources other than the report submitted and the replies given by the Niger delegation. Those replies had shown the Government's desire to cooperate with the Committee, however, and some concerns had been answered. He associated himself with the concerns expressed by other members, but also with the feelings of optimism prompted by the political changes in the country.

47. Mr. NDIAYE said that the report and the responses from the Niger delegation indicated a clear improvement in the country's human rights situation. When new democratic political institutions were finally in place, further improvements could be expected. He suggested that the second periodic report should be submitted within a year to allow the time for the implementation of the reforms in progress.

48. The CHAIRMAN, speaking in his personal capacity, said that he appreciated the efforts of the Niger delegation to answer the Committee's questions. More information was needed, however, not only about the Constitution and laws but also about their implementation.

49. Mr. ABARRY (Niger) said that he would transmit the Committee's observations to his Government as soon as possible and that they would be reflected in the second periodic report. The deadline for submission of that report should allow sufficient time for new procedures to become operational, in order to avoid submitting a report that had already become out of date.

The meeting rose at 12.25 p.m.